



November 15, 1999

Mr. Steven D. Monté
Assistant City Attorney
City of Dallas
Municipal Building
Dallas, Texas 75201

OR99-3245

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128777.

The Dallas Police Department (the “department”) received an open records request for certain documents pertaining to a particular cause number. You acknowledge that more than ten business days have elapsed between the date the department received the records request and the date of your request for a decision from this office in this matter. *See* Gov’t Code § 552.301(a).

Section 552.301(a) of the Government Code requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381; *see also* Open Records Decision No. 150 (1977).

We note, however, that some of the information at issue may be confidential under common law privacy and thus must be withheld from public disclosure pursuant to section 552.101 of the Government Code. Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

The records at issue pertain to an instance of aggravated sexual assault. Clearly, information pertaining to an incident of sexual assault raises an issue of common-law privacy. Open Records Decision No. 339 (1982). In Open Records Decision No. 339 (1982), this office concluded that “a detailed description of an incident of aggravated sexual abuse raises an issue of common law privacy” and therefore any information tending to identify the assault victim and details of the assault should be withheld pursuant to common-law privacy. *See also* Open Records Decision No. 393 (1983). *But see Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (no privacy interest in information contained in public court records); Gov’t Code § 552.023 (information protected solely by privacy may not be withheld from individual to whom information pertains or from that person’s “authorized representative”).¹

One of the documents at issue also contains the criminal history of the criminal defendant. Where an individual’s criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual’s right to privacy. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). Accordingly, we conclude that the department must also withhold on privacy grounds the criminal defendant’s compiled criminal history.

We have marked the information that the department must withhold from the public on privacy grounds unless this information is otherwise contained in public court records. You have not shown compelling reasons why the remaining information at issue should not be released. Consequently, the department must release the remaining information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail.

Sam Haddad
Assistant Attorney General
Open Records Division

¹We do not address in this ruling whether the requestor is acting as the assault victim’s “authorized representative.”

Mr. Steven D. Monté

SH/RWP/ch

Ref: ID# 128777

Encl. Marked documents

cc: Ms. Claudette Greenwood
c/o Mr. Steven Monté
Assistant City Attorney
City of Dallas
Municipal Building
Dallas, Texas 75201
(w/o enclosures)